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Assistant Commissioner for Patents, Washington, D.C. 20231, on January 11, 2000.


Joy Day

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of:

Ann MONOSOV and Xinyu Fu

Serial No.: 09/023,232, for Reissue of
U.S. Patent 5,569,812

Filing Date: February 13, 1998

NUDE MOUSE MODEL FOR HUMAN
NEOPLASTIC DISEASE

Examiner: unknown

Group Art Unit: unknown

DECLARATION OF R. LYNN CRUZ

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

I, R. Lynn Cruz, declare as follows:

1. I am employed as a Patent Secretary by the law firm of Morrison & Foerster, LLP., in the Washington, D.C. office. My duties include assisting patent attorneys in the preparation of correspondence, papers and documents relating to the filing and prosecuting of patent applications before the U.S. Patent and Trademark Office. I am also responsible for the mailing of such documents as well as the maintenance of files containing such documents.
2. More specifically, my duties include assisting Thomas D. Mays, attorney of record in the above identified reissue application.

3. On March 20, 1999, I spoke with Ms. Jackie Cole of the US Postal Service ("USPS") (at telephone: 202-523-2188). I asked Ms. Cole to track an item deposited on January 26, 1999, as certified mail (No. Z526279101) with the USPS. This item contained a copy of the above-referenced reissue application and appropriate declaration and was addressed to Dr. Xinyu Fu at 3725 Miramar Street, Apt. C, La Jolla, California 92037. Ms. Cole responded on March 24, 1999, and informed me that she had placed an inquiry to the USPS California Branch Office in La Jolla (Zip Code 92037) but that she had not received a response. Later on March 24, 1999, she informed me that the USPS La Jolla Branch Office could find no record of certified mail (No. Z526279101) and suggested that we file a Post Office Form 1510 (Tracer).

4. I called the USPS La Jolla Branch Office (Zip Code 92037) (at telephone: 800-275-8777) on March 25, 1999, to further inquire about this piece of certified mail (No. Z526279101). The USPS La Jolla Branch Office was still unable to locate this piece of mail. I was instructed to file a USPS Form 3811A.

5. On March 26, 1999, I called telephone directory assistance of La Jolla, California (at telephone: 619-555-1212) to determine if a Dr. Xinyu Fu was listed on Miramar Street in La Jolla. I was informed that there was one listing for a "Mr. Fu" at 3715 Miramar Street (at telephone: 619-587-0247).

6. I placed a call to Mr. Fu at the telephone number provided. The person that answered the phone confirmed that his name was Mr. Fu, but that he was not Dr. Xinyu Fu. I asked the person if anyone else lived in his household who was named Dr. Xinyu Fu. I further inquired if he knew of anyone that lived in his building named Dr. Xinyu Fu. I also inquired if he had any relatives named Dr. Xinyu Fu. Mr. Fu confirmed that he did not know of a Dr. Xinyu Fu.

7. On March 29, 1999, I prepared two packages for delivery by the USPS, a first package to be delivered by Express Mail; and a second package to be delivered by Certified Mail. I addressed each package to: Dr. Xinyu Fu, 3725 Miramar Street, Apt. C, La Jolla, CA 92037. Each package contained the application Declaration prepared by Thomas D. Mays for signature by Dr. Xinyu Fu to be filed in this application (and a then copending, now abandoned reissue application). On March 29, 1999, I deposited with the USPS the first package as Express Mail (certificate No.: EJ004417477US) and the second package as Certified Mail (certificate No.: Z 526 279 102).

8. On April 1, 1999, I called the automated telephone USPS Express Mail tracking system (at telephone: 800-222-1811) regarding Express Mail (certificate No.: EJ004417477US). The automated telephone system informed me that this package was delivered on March 30, 1999 at 2:55 PM, but that the USPS Express Mail Delivery Person had left a notice with the addressee on March 31, 1999, notifying him that they would attempt another postal delivery on the next business day and if the second delivery were unsuccessful then the Post Office would hold the package at the Post Office for 5 business days and then it would be returned to the Sender. Thus, I received contradicting information.

9. Since there was conflicting information, I contacted a representative of the USPS, Michael Birmingham (at telephone: 800-222-1811). Mr. Birmingham informed me that there was in fact a conflict in the scanned information in the computer. He suggested that we call our local Express Mail office (at telephone: 202-636-1401).

10. On April 1, 1999, I called our local Express Mail Post Office (at telephone: 202-636-1401) and spoke with a representative, (name unknown). She stated that the Express Mail package arrived at the La Jolla station at 2:06 PM on March 30, 1999, and was delivered on March 30, 1999 at 2:55 PM. I asked her to confirm this information and she made a conference call with me to Supervisor, Flo Mills, of the La Jolla Express Mail Station. Flo Mills stated that she would research the delivery of this package and contact me by telephone within the hour.

11. Later that day (April 1, 1999), Ms. Flo Mills telephoned me and confirmed that the information in the USPS's computer tracking system was incorrect. Ms. Mills confirmed that an attempt to deliver this package was made on March 30, 1999 at 2:55 PM, and a second attempt to deliver this package was made on March 31, 1999 at 11:16 AM. Following these two unsuccessful attempts to deliver this mail, she currently had physical possession of this package. She finally informed me that she would retain possession of this package for five business days, and if it were not claimed within five business days she would return it to our office, as the sender.

12. On or about April 13, 1999, I telephoned the USPS (at telephone: 202-635-5300) to determine the status of the delivery of the second package, which I had deposited with the USPS on March 29, 1999, as Certified Mail (certificate No.: Z 526 279 102). I was informed that the USPS had no record that this package had been received by the USPS La Jolla Branch Office. The USPS recommended filing a Form 3811A which would constitute a request for an